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4 MARTIN MALBERG,
5 Plaintiff,
6 v.
7
8 JOANNE MCCRACKEN, et al.,
9 Defendants.

10 Case No. [5:22-cv-01713-EJD](#)

11 **ORDER GRANTING MOTIONS TO
12 DISMISS**

13 Re: ECF Nos. 11, 12, 38

14 Pro se Plaintiff Martin Malberg brings this suit against Judge Joanne McCracken, Judge
15 Christine Garcia-Sen (with Judge McCracken, the “Judicial Defendants”), the California Attorney
16 General Rob Bonta, and the State of California (with Attorney General Bonta, the “State
17 Defendants”). The Complaint arises from the issuance of a restraining order against Plaintiff
initiated by his ex-wife pursuant to the California Domestic Violence Prevention Act.

18 The Judicial Defendants and the State Defendants have each filed separate Motions to
19 Dismiss. ECF Nos. 11 (“State Mot.”), 12 (“Judge Mot.”). Plaintiff has responded to both Motions
20 in a single opposition, ECF No. 22 (“Opp.”), and both sets of Defendants have replied. ECF Nos.
21 23, 25. Plaintiff has also further filed an unauthorized opposition. ECF No. 47.

22 Having considered the parties’ briefing and construed the pro se pleadings liberally in
23 favor of Plaintiff, the Court GRANTS Defendants’ Motions.

24 **I. FACTUAL BACKGROUND**

25 On January 11, 2021, Plaintiff’s wife filed a petition for dissolution and a request for a
26 domestic violence restraining order against Plaintiff in the Superior Court of California, County of
27 Santa Clara (the “State Proceedings”). Compl. § III(B), ECF No. 1; *see also* Request for Judicial
28 Case No.: [5:22-cv-01713-EJD](#)

ORDER GRANTING MOTIONS TO DISMISS

1 Notice, Ex. A (“State Ct. Dkt.”), ECF No. 18, at 11.¹ Judge McCracken granted the temporary
2 restraining order *ex parte* subject to a subsequent hearing, which was served on Plaintiff around
3 January 28, 2021. *Id.* § III(B); *see also* Judge Mot. 3.

4 The restraining order hearing was continued several times until it was finally heard by
5 Judge Garcia-Sen on March 3, 2022, along with the trial in the State Proceedings, allegedly
6 without Plaintiff’s consent or accommodating his request for a jury trial. Compl. § III(B); *see also*
7 Judge Mot. 3–4. On March 4, 2022, the day after the hearing, Judge Garcia-Sen issued a
8 restraining order against Plaintiff (“Restraining Order”). Judge Mot. 4. On March 11, 2022, the
9 Superior Court entered a final judgment of dissolution. *Id.* 4; *see also* State Ct. Dkt., at 6.

10 On March 14, 2022, Plaintiff mailed a letter to Attorney General Rob Bonta, requesting
11 that the Attorney General “take appropriate legal action to enforce compliance with the U.S.
12 Constitution or remove judges who refuse to uphold it in violation of their Oaths of Office.” Opp.,
13 Ex. 15. On April 6, 2022, the Attorney General’s office responded that his office is prohibited
14 from representing private individuals or providing legal advice or analysis. ECF No. 22, at 54.

15 On March 17, 2022 (before he had received the Attorney General’s response), Plaintiff
16 filed the present Complaint and Request for Injunction *pro se* before this Court, naming as
17 defendants the two Superior Court judges that presided over the State Proceedings, Attorney
18 General Bonta, and the State of California. Compl. § I(B). Plaintiff seeks several types of
19 injunctive relief, including an “emergency injunction” of the State Proceedings and the
20 Restraining Order, vacatur of all judgments and all rulings in the State Proceedings, and a “strike
21 down” of the allegedly unconstitutional California Domestic Violence Prevention Act (“DVPA”),
22 at Cal. Family Code §§ 6200, *et seq.* Compl. § V. Plaintiff also seeks \$7,000 in damages from
23 each individual defendant to be donated to the “Defending the Republic” organization. *Id.*
24 Additionally, he seeks prison time and criminal referrals against all individual Defendants. *Id.*

25 On May 17, 2022, the State Defendants moved to dismiss the Complaint for lack of subject

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27 ¹ The Court grants both Defendants’ Requests for Judicial Notice of the register of actions in the
28 State Proceedings, Case No. 21FL000043. ECF Nos. 13, 18.

1 matter jurisdiction based on the *Younger* abstention doctrine, as well as Plaintiff's inability to
2 maintain a claim due to the State Defendants' Eleventh Amendment immunity. ECF No. 11. On
3 May 19, 2022, the Judicial Defendants moved to dismiss the Complaint for lack of subject matter
4 jurisdiction per the *Rooker-Feldman* and *Younger* abstention doctrine. Additionally, they move to
5 dismiss, *inter alia*, on the basis that they are protected by judicial immunity.² ECF No. 12.

6 II. LEGAL STANDARD

7 A motion under Federal Rule of Civil Procedure 12(b)(1) challenges the Court's subject
8 matter jurisdiction to hear Plaintiff's claims, *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir.
9 2004), whereas a motion under Rule 12(b)(6) tests the legal sufficiency of claims alleged in the
10 complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

11 A jurisdictional attack per Rule 12(b)(1) may be factual or facial. *White v. Lee*, 227 F.3d
12 1214, 1242 (9th Cir. 2000). A facial attack—the type Defendants brings here—“asserts that the
13 allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction.”
14 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In resolving a facial attack,
15 the Court must “[a]ccept[] the plaintiff's allegations as true and draw[] all reasonable inferences in
16 the plaintiff's favor [to] determine[] whether the allegations are sufficient as a legal matter to
17 invoke the court's jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).
18 Because it is presumed “that federal courts lack jurisdiction unless the contrary appears
19 affirmatively from the record, the party asserting federal jurisdiction when it is challenged has the
20 burden of establishing it.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006).

21 To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient
22 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
23 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).
24 A plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that

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26 ² The Court DENIES Plaintiff's “Motion for Recusal” of Defendants' counsel and removing all
27 their filings on the basis that he has filed separate suits against those attorneys as well. ECF No.
28 38. No rule of professional conduct or conflicts require such a ruling, nor does Plaintiff cite a
specific rule. In any event, such a conflict would not be adverse to Plaintiff.

1 the defendant is liable for the misconduct alleged,” which requires “more than a sheer possibility
2 that a defendant has acted unlawfully.” *Id.*

3 Pro se pleadings are “liberally construed, particularly where civil rights claims are
4 involved.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). However, pro
5 se plaintiffs also “must follow the same rules of procedure that govern other litigants,” and the
6 Court may not “supply essential elements of the claim that were not initially pled.” *Rupert v.*
7 *Bond*, 68 F. Supp. 3d 1142, 1153 (N.D. Cal. 2014); *Ivey v. Bd. of Regents of Univ. of Alaska*, 673
8 F.2d 266, 268 (9th Cir. 1982).

9 III. DISCUSSION

10 Although the Complaint does not specifically articulate what claim or on what basis the
11 Plaintiff is seeking relief, the Court broadly construes its allegations in reviewing whether it
12 should be dismissed. As the bases for this Court’s federal question jurisdiction, Plaintiff has cited
13 three authorities: (1) the First Amendment; (2) 18 U.S.C. §§ 241, 242; and (3) 42 U.S.C. § 1983.
14 In the absence of any other allegations more specifically outlining the bases for Plaintiff’s claims,
15 the Court will treat these authorities as Plaintiff’s asserted claims and address each in turn.

16 The Court will also remark at the outset that Plaintiff has filed several “logic briefs”
17 without reference to any pending motion or requesting any particular relief. *See, e.g.*, ECF Nos.
18 50, 51, 55. To the extent that Plaintiff is attempting to supplement his initial complaint, the Court
19 is not permitted to consider facts, allegations, or legal claims beyond the originally filed
20 Complaint. *See supra* Section II. Accordingly, the Court here only considers the allegations made
21 in the Complaint (ECF No.1) and arguments in Plaintiff’s opposition brief (ECF No. 22).

22 A. First Amendment

23 Plaintiff first invokes the First Amendment as a basis for federal question jurisdiction.
24 Compl. § II(A). However, the First Amendment only sets forth rights and, by itself, does not
25 provide a means to enforce those rights in court. Plaintiff does, however, cite 42 U.S.C. § 1983, a
26 statute that *does* provide a vehicle for private citizens to enforce their federal constitutional rights.
27 *See, e.g.*, *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992).

1 Accordingly, the Court will treat the Complaint's citation to the First Amendment as the asserted
2 right for his claim under 42 U.S.C. § 1983, which the Court addresses at Section III(C).

3 **B. 18 U.S.C. §§ 241, 242**

4 In his Complaint, Plaintiff cites two federal criminal statutes for conspiracy to violate
5 rights, 18 U.S.C. §§ 241, 242; and in his opposition, Plaintiff also mentions the federal criminal
6 statute for seditious conspiracy, 18 U.S.C. § 2384. Compl. §§ II(A), V; Opp. 9–10. Plaintiff
7 appears to seek criminal penalties against Defendants, including prison time, criminal penalties,
8 and “criminal charges/trial referral for Treason.” Compl. § V.

9 It is well-established that “private individuals lack standing to assert claims for relief based
10 on criminal statutes.” *Redmond v. United States*, No. 22-CV-01107-TSH, 2022 WL 1304472, at
11 *3 (N.D. Cal. May 2, 2022) (listing cases); *see also Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th
12 Cir. 1980) (“Appellant also claimed relief under 18 U.S.C. §§ 241 and 242. These criminal
13 provisions, however, provide no basis for civil liability.”); *Carmichael v. Cnty. of San Diego*, 2019
14 WL 6716728, at *6 (S.D. Cal. Dec. 10, 2019) (finding no private cause of action under 18 U.S.C.
15 § 2384). Plaintiff’s opposition does not provide any explanation for why he believes a private
16 citizen—as opposed to a federal prosecutor—has standing to enforce federal criminal statutes.

17 Accordingly, to the extent Plaintiff attempts to seek criminal penalties by filing this civil
18 suit, the Court will DISMISS such claims for lack of standing WITHOUT LEAVE TO AMEND.

19 **C. 42 U.S.C. § 1983**

20 As noted above, the Court will construe the Complaint as primarily asserting a § 1983
21 claim for deprivation of Plaintiff’s First Amendment rights. However, Defendants have
22 challenged the Court’s subject matter jurisdiction, which the Court must resolve before turning to
23 any merits of any case. *See, e.g., Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101 (1998).

24 **1. Rooker-Feldman Doctrine**

25 The Judicial Defendants have argued that this Court may not hear this case under the
26 *Rooker-Feldman* doctrine. Under this doctrine, federal district courts do not have appellate
27 jurisdiction to hear cases that are, in effect, appeals from state court judgments. *See, e.g.,*

1 *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010). This is because, “[a]bsent express
2 statutory authorization, only the Supreme Court has jurisdiction to reverse or modify a state court
3 judgment.” *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007). The Supreme Court
4 has noted that this doctrine bars “cases brought by state-court losers complaining of injuries
5 caused by state-court judgments rendered before the district court proceedings commenced and
6 inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic
7 Indus. Corp.*, 544 U.S. 280, 284 (2005). Courts in the Ninth Circuit apply this test by considering
8 whether plaintiff (1) “asserts as a legal wrong an allegedly erroneous decision by a state court,”
9 and (2) “seeks relief from a state court judgment based on that decision.” *Carmona*, 603 F.3d at
10 1041 (quoting *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)).

11 **a. Application**

12 All elements of *Rooker-Feldman* are present here. First, the Complaint makes clear that
13 the target of Plaintiff’s ire is the Restraining Order entered against him, *i.e.*, he “asserts as a legal
14 wrong an allegedly erroneous decision by a state court.” *Carmona*, 603 F.3d at 1041. Despite
15 how broadly the Court construes this pro se Complaint, there is little room for any other
16 conclusion when Plaintiff openly alleges that his “constitutional rights were violated by imposition
17 of a Restraining Order based on an unconstitutional ‘words are violence’ concept ingrained in CA
18 statute.” Compl. § III(C). These allegations pervade the rest of the Complaint:

- 19 • Judge McCracken “imposed a Restraining Order in violation of the 1st Amendment based
20 on protected speech text messages,” Compl. § III(A);
- 21 • Judge Garcia-Sen “persisted in attempting to enforce the [Restraining Order] to prevent
22 [him] from communicating health information to [his] wife,” *id.*;
- 23 • The Restraining Order “seiz[ed] all of [his] personal property without a warrant,” *id.*; and
- 24 • Judge Garcia-Sen “conducted a non-jury trial without [his] consent . . . and without ever
25 providing any charging documents or specifying the violation of the law.”

26 Given these direct admissions, the Court finds that Plaintiff is indeed claiming that the state
27 court’s Restraining Order was erroneous, satisfying the first element of *Rooker-Feldman*.

1 The Court also finds that the second *Rooker-Feldman* requirement—seeking relief from a
2 state court judgment based on the allegedly erroneous decision—is also met here. Of the eight
3 remedies the Complaint seeks, at least three purport to nullify the Restraining Order in some way:

- 4 • Emergency Injunction on [State Proceedings] against all Defendants #1–4;
5 • Removal of the Restraining Order and nullify it *ab initio*;
6 • Vacate all judgements in [State Proceedings]; Nullify all rulings in [State Proceedings] OR
7 dismiss the case.

8 Compl. § V. For the purposes of the second *Rooker-Feldman* element, it is difficult to envision a
9 clearer example of a plaintiff attempting to blatantly end run an adverse state court judgment.
10 Several federal courts in California have also used the *Rooker-Feldman* doctrine to dismiss
11 complaints with remarkably similar allegations challenging California domestic violence
12 restraining orders. *See, e.g., Baker v. California*, 2018 WL 4057005, at *3 (C.D. Cal. July 16,
13 2018) (collecting cases), report and recommendation adopted, 2018 WL 4057260 (C.D. Cal. Aug.
14 16, 2018), aff’d, 785 F. App’x 478 (9th Cir. 2019).

15 Attorney General Bonta suggests that the underlying State Proceedings may still be
16 ongoing because Plaintiff had not yet filed an appeal, which potentially defeats the application of
17 *Rooker-Feldman*. State Mot. 3, 9. However, “[p]roceedings end for *Rooker-Feldman* purposes
18 when the state courts finally resolve the issue that the federal court plaintiff seeks to relitigate in a
19 federal forum, even if other issues remain pending at the state level.” *Mothershed v. Justs. of*
20 *Supreme Ct.*, 410 F.3d 602, 604 n.1 (9th Cir. 2005); *see also Eicherly v. O’Leary*, 721 F. App’x
21 625, 627 (9th Cir. 2018) (holding that plaintiffs “may not avoid *Rooker-Feldman*’s bar and obtain
22 review of adverse state court decisions in federal district court just because at least one of their
23 cases remains pending on appeal in state court”). Here, the Restraining Order was issued on
24 March 4, 2022, and the Superior Court entered judgment on March 11, 2022. *See* State Ct. Dkt.,
25 ECF No. 18, at 6–7. Furthermore, Plaintiff has never suggested that the underlying State
26 Proceedings are still ongoing or otherwise active. The Court, therefore, finds that the State
27 Proceedings’ decisions at issue here are sufficiently final for the purposes of *Rooker-Feldman*.

1 Accordingly, the Court finds that *Rooker-Feldman* should apply in this case. However, the
2 doctrine may not apply to all claims or relief that Plaintiff may be seeking in this case.

3 **b. Constitutional Challenges**

4 The Court notes that, although much of the Complaint stems around Plaintiff's grievances
5 with the Restraining Order, the Complaint could also conceivably be construed as asserting a
6 facial attack on the DVPA's constitutionality more broadly. Compl. § V (seeking "Strike down of
7 CA domestic violence prevention statute, confirm it is unconstitutional ab initio"); *see also* Opp.
8 2–3. To the extent Plaintiff is challenging the constitutionality of the DVPA as a general matter,
9 that type of broad-based facial challenge is not necessarily barred by the *Rooker-Feldman*
10 doctrine, so long as the constitutional challenge is not "inextricably intertwined" with the judicial
11 decision. *See, e.g., Noel*, 341 F.3d at 1157 n.6; *see also Baker*, 2018 WL 4057005, at *3 n.1.
12 (holding that, although as-applied constitutional challenges to the DVPA are barred, "Plaintiff's
13 facial challenges to the DVPA, on the other hand, are not barred by *Rooker-Feldman*").

14 That said, the Complaint fails to allege any meaningful contours to the purported facial
15 constitutional attack on the DVPA such that the Court could disentangle Plaintiff's constitutional
16 challenge from the impermissible *de facto* appeal of the State Proceedings. Presumably, the
17 challenge is for violating the First Amendment, but Plaintiff does not identify what particular
18 provision or function of the DVPA infringed upon his First Amendment rights. The most that the
19 Complaint and the opposition has alluded to is that "[a]ny court order that uses an unconstitutional
20 'law' to 'abridge the freedom of speech' of a U.S. citizen is a violation of the First Amendment . .
21 . and is automatically null and void ab initio." Opp. 3; *see also* Compl. § III(A) (alleging the
22 Restraining Order was "in violation of the 1st Amendment based on protected speech text
23 messages using the 'words are violence' premise"). These allegations, however, are mostly
24 tautological and do not provide enough detail for the Court to separate Plaintiff's facial
25 constitutional attack from the State Proceedings, especially given Plaintiff's consistent and
26 frequent references to his own Restraining Order. If Plaintiff wishes to assert such a challenge to
27 the DVPA, he must do so in such a manner that distinguishes his constitutional arguments from

1 the Restraining Order imposed against him. Otherwise, his constitutionality challenge would
2 remain barred by the *Rooker-Feldman* doctrine as a *de facto* appeal from the State Proceedings.

3 In sum, the Court finds that the Complaint appears to challenge and seek relief from the
4 Restraining Order in the underlying state action, which would bar this action under *Rooker-*
5 *Feldman*. To the extent the Complaint challenges the constitutionality of the DVPA on its face,
6 those challenges would only be barred if they are “inextricably intertwined” with the State
7 Proceedings. However, the Court is unable to ascertain the specifics of the constitutional
8 challenge as currently pled, and therefore the Court is without subject matter jurisdiction to hear
9 even the constitutional challenges to the DVPA.

10 Accordingly, the Court will DISMISS the Complaint for lack of subject matter jurisdiction.
11 The Court proceeds to consider whether it should do so with or without leave to amend.

12 **2. Judicial Immunity**

13 Although the Court acknowledges that the Complaint could potentially be construed in a
14 narrow manner that avoids the *Rooker-Feldman* bar, there is no such interpretation that would
15 permit this Complaint to proceed against the Judicial Defendants at least.

16 First, no amount of favorable construction can yield an interpretation that both implicates
17 the Judicial Defendants without also functioning as a *de facto* appeal of their orders. Put
18 differently, any claim that can be directed at the Judicial Defendants would almost certainly be
19 “inextricably intertwined” with their judicial decisions. In that respect, their “liability” is entirely
20 within the scope of *Rooker-Feldman*.

21 Second, even if this Court somehow has subject matter jurisdiction over the Judicial
22 Defendants, judges are absolutely immune from a civil rights suit based on actions taken in their
23 judicial capacity, unless they acted in the clear absence of all jurisdiction. *See Mireles v. Waco*,
24 502 U.S. 9, 11–12 (1991); *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978). Judicial immunity
25 “is not overcome by allegations of bad faith or malice,” *Mireles*, 502 U.S. at 11, or an assertion
26 that the judge acted in error or exceeded his authority, *see Stump*, 435 U.S. at 1105. Plaintiff
27 attempts to circumvent this immunity by arguing “once Plaintiff [sic] rights were violated on

1 January 11, 2021, [Judge McCracken] was no longer acting in any judicial capacity that would
2 afford immunity of ANY kind.” Opp. 8. However, even if accepted as true, this theory does not
3 mean the Santa Clara County Superior Court over which Judge McCracken presides no longer had
4 jurisdiction over Plaintiff. *See Stump*, 435 U.S. at 359–60. As the Supreme Court has remarked,
5 “[i]f judicial immunity means anything, it means that a judge will not be deprived of immunity
6 because the action he took was in error or was in excess of his authority.” *Mireles*, 502 U.S. at
7 12–13 (internal quotation marks and ellipses omitted).

8 Plaintiff’s reliance on *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), is misplaced. That case
9 did not involve or address the limitations of judicial immunity; in fact, the first sentence in that
10 order reads, “[t]he issue in this case is the scope of the immunity available to the *senior aides and*
11 *advisers of the President of the United States.*” *Id.* at 802 (1982) (emphasis added). Moreover, it
12 specifically confirmed the continued vitality of judicial immunity. *Id.* at 810–11 (“We have
13 recognized that the judicial . . . functions require absolute immunity.”).

14 Accordingly, any claim against Judge McCracken and Judge Garcia-Sen would fall within
15 Rooker-Feldman’s scope and, in any event, they are shielded by absolute judicial immunity. They
16 are not proper parties under any possible construction of the Complaint. The Court therefore
17 DISMISSES both Judicial Defendants WITHOUT LEAVE TO AMEND.

18 **3. Eleventh Amendment Immunity**

19 With respect to the State Defendants, the State and its employees are generally protected
20 from suit by Eleventh Amendment immunity. *See Will v. Michigan Dep’t of State Police*, 491 U.S.
21 58, 66 (1989); *Ass’n des Eleveurs de Canards et d’Oies du Quebec (“Quebec”) v. Harris*, 729 F.3d
22 937, 943 (9th Cir. 2013). This immunity fully shields the State of California from Plaintiff’s facial
23 constitutional attack, but it does not necessarily cover suits against state officers in their official
24 capacities for prospective equitable relief, a doctrine referred to as *Ex parte Young*. *Quebec*, 729
25 F.3d at 943 (citing *Ex parte Young*, 209 U.S. 123 (1908)). The state official named in an *Ex parte*
26 *Young* suit must be one with a “fairly direct” connection to the challenged statute’s enforcement.
27 *Quebec*, 729 F.3d at 943.

1 The Attorney General argues that Plaintiff cannot maintain an action under *Ex parte Young*
2 because the Complaint contains no allegations that he had violated federal law or the U.S.
3 Constitution. State Mot. 8. Additionally, he argues that the Attorney General has no authority to
4 vacate the Restraining Order or any other judicial decisions because the California judicial power
5 is vested in the state judiciary. *Id.* However, the Attorney General does not address whether he
6 would be a proper defendant for suit challenging the DVPA's constitutionality. *See, e.g., Baker,*
7 2018 WL 4057005, at *1 (noting that plaintiff had named the California Attorney General in
8 challenging the constitutionality of the DVPA); *cf. Snoeck v. Brussa*, 153 F.3d 984, 989 (9th Cir.
9 1998) ("The attorney general is nonetheless the proper defendant for Eleventh Amendment
10 purposes because his or her job is to initiate legal proceedings to persuade the courts to enforce the
11 statute, even though some other body ultimately decides whether and what punishment is
12 appropriate.") (Tashima, J., dissenting).

13 That said, Plaintiff has not alleged any facts regarding whether or how the Attorney
14 General maintains any enforcement authority over the DVPA. The most he has alleged is that the
15 Attorney General "is responsible for enforcing compliance with the U.S. Constitution per his
16 oath." Compl. § III(A). However, "a generalized duty to enforce state law or general supervisory
17 power over the persons responsible for enforcing the challenged provision will not subject an
18 official to suit." *Quebec*, 729 F.3d at 943. Nor does the DVPA appear to be a statute that is
19 enforceable by California district attorneys, over whom the Attorney General has "direct
20 supervision." Cal. Const. art. 5, § 13; *see also Ervin v. California*, 2018 WL 3375058, at *6 (S.D.
21 Cal. July 11, 2018) (finding that plaintiff failed to allege that the "Attorney General [] has a
22 specific duty to enforce the Domestic Violence Prevention Act [or] an adequate connection
23 between Attorney General [] and the challenged statute"). Indeed, there was no district attorneys
24 involved in the State Proceedings here. *See* State Ct. Dkt., ECF No. 18, at 4–5. However, this
25 does not mean that Plaintiff could not potentially amend his Complaint to allege facts evidencing a
26 nexus between the DVPA and the Attorney General or to add a proper state official defendant for
27 the purposes of *Ex parte Young*.

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* * *

2 Because the Complaint alleges that the Santa Clara County Superior Court had entered an
3 allegedly erroneous Restraining Order against Plaintiff and requests various injunctive relief to
4 evade compliance with the Restraining Order, Plaintiff's § 1983 claim falls cleanly within the
5 scope of the *Rooker-Feldman* doctrine. Plaintiff is effectively asking this Court to act as an
6 appellate court over its state counterpart, a function that this Court has no jurisdiction to perform.³

7 To the extent Plaintiff seeks to challenge the facial constitutionality of the DVPA, he may
8 do so only if the constitutional challenge is not "inextricably intertwined" with the California
9 Superior Court's judicial decisions and orders. However, the Complaint's current allegations
10 challenging the statute's constitutionality are too vague for the Court to make such a finding. That
11 said, the Court also cannot conclude that permitting Plaintiff to amend for the limited purpose of
12 alleging additional facts to support his constitutionality challenges would be futile.

13 **IV. CONCLUSION**

14 Based on the foregoing, the Court GRANTS the Defendants' Motions to Dismiss. The
15 Complaint is DISMISSED as follows:

- 16 • DISMISSED WITHOUT LEAVE TO AMEND to the extent Plaintiff seeks to enforce
17 18 U.S.C. §§ 241, 242;
18 • DISMISSED WITHOUT LEAVE TO AMEND as to Judge Joanne McCracken and
19 Judge Garcia-Sen;
20 • DISMISSED WITHOUT LEAVE TO AMEND as to the State of California; and
21 • DISMISSED WITH LEAVE TO AMEND as to Attorney General Bonta for the
22 limited purpose of amending Plaintiff's facial constitutional challenge to the DVPA.

23 To that end, Plaintiff may amend his Complaint by adding additional defendants.

24 If Plaintiff wishes to address the deficiencies identified in this order and believes he can do
25 so in compliance with the standards set forth in Federal Rules of Civil Procedure 8(a) and 11(b),

27 ³ The proper court to hear an appeal from the Santa Clara County Superior Court is the California
28 Court of Appeal for the Sixth Appellate District.

1 he may file an amended complaint within 30 days of the date of this Order.

2 The Court also informs Plaintiff that the Federal Pro Se Program at the San Jose
3 Courthouse provides free information and limited-scope legal advice to pro se litigants in federal
4 civil cases. The Federal Pro Se Program is available by appointment by calling (408) 297-1480.
5 In addition, the Court's webpage offers resources for pro se litigants, including a pro se handbook
6 free of charge. These resources may be accessed at: <https://www.cand.uscourts.gov/pro-se-litigants/>.

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8 **IT IS SO ORDERED.**

9 Dated: March 31, 2023

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12 EDWARD J. DAVILA
13 United States District Judge

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United States District Court
Northern District of California

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